

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0077P
Sales Tax**

For Periods Ending 08/31/05, 09/30/05, 10/31/05, 11/30/05

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b)(c).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer was assessed a 10% negligence penalty for the late payment of sales tax for periods ending 08/31/05, 09/30/05, 10/31/05, & 11/30/05. The returns and payments were due on the 30th day of the month following each period. The returns and payments were not remitted by the taxpayer until 02/01/2006, making all payments several months late.

I. Tax Administration- Ten Percent (10 percent) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10 percent) negligence penalty imposed for the late filing of its August, September, October and November, 2005 sales tax returns pursuant to IC 6-8.1-10-2.1.

The taxpayer protests stating that the late payments were the result of a bookkeeper leaving the company. Subsequently, the person who took charge, was less qualified, and had to deal with the duties of two persons. Additionally, the taxpayer believed its outside accounting firm was making sure the taxes were being taken care of but subsequently the taxpayer found out that this was not within the scope of the accounting firms responsibilities.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section...

In this instance, the taxpayer's primary argument is that the bookkeeper left in August and less qualified personnel were placed in charge of the bookkeeping duties. The tax reporting and payment functions are essential elements in the exercise of ordinary business care. The taxpayer collected trust taxes on behalf of the State of Indiana for four months and failed to remit the moneys to the State in a timely manner. These actions clearly do not demonstrate that the taxpayer exercised ordinary business care and prudence in handling the sales tax responsibilities, and reasonable cause has not been shown.

FINDING

The taxpayer's protest is denied.

RW/TG/DK 06/14/07